Committee on Balance of Payments Restrictions

Status

Pursuant to the GATT 1947 and the GATT 1994, any Member imposing restrictions for balance of payments purposes is required to consult regularly with the BOP Committee to determine whether the use of restrictive measures is necessary or desirable to address its balance of payments difficulties. Full consultations involve a complete examination of a country's trade restrictions and balance of payments situation, while simplified consultations provide more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in the balance of payments. The Uruguay Round results strengthened substantially the provisions on balance of payments.

Assessment of the First Five Years of Operation

The Committee on Balance of Payments has had extraordinary success during the past five years. In contrast to the pre-WTO period, the Committee and its Members, particularly the United States, have ensured that the BOP provisions of the GATT 1994 are used as originally intended: to enable countries undergoing a balance of payments crisis to impose temporary measures until their situation improves. In the past, Members resorted to BOP measures to provide protection to domestic industries when such action was not warranted. The BOP Committee works closely with the International Monetary Fund (IMF) in conducting its BOP consultations; BOP provisions provide for close coordination with the IMF on BOP matters.

This situation has changed, due to both the improved rules that were established in the Uruguay Round and better enforcement, including use of the dispute settlement provisions. The Uruguay Round Understanding on Balance of Payments Provisions made a number of clarifications to the two primary articles dealing with balance of payments in the GATT 1947 and now GATT 1994: Article XII (Restrictions to Safeguard the Balance of Payments) and Article XVIII:B (Governmental Assistance to Economic Development). The Understanding confirmed that price-based measures, i.e., import surcharges, are preferred, that the use of quantitative restrictions is allowed only under exceptional circumstances and that measures taken for BOP reasons may only be allowed to protect the general level of imports, i.e., applied across-the-board, not to protect specific sectors from competition. Additionally, the Understanding established strict notification deadlines and explicit documentation requirements, and permitted "reverse notification" by Members concerned with measures instituted, but not notified, by other Members.

Over the course of the last five years, the WTO's BOP provisions have become more important, in large part due to the increased level of tariff bindings that resulted from the Uruguay Round market access negotiations. The bound tariff rates ensure that Members cannot breach the bound rates without consequences. WTO rules ensure that when bound rates are breached, the Member taking the action must comply with the rules governing trade in goods. Accordingly, more stringent BOP rules, particularly the new limitation on the use of quantitative restrictions, the strong preference for price-based measures and the inability of countries to protect only specific sectors, have dissuaded most countries from resorting to BOP measures. In spite of the Asian financial crisis, no country resorted to BOP measures.

The improved Uruguay Round rules have been enhanced by stronger and more successful enforcement of the provisions. Two particular examples are illustrative. In 1995, the first case seeking approval of new measures that came before the WTO BOP Committee concerned Brazil's desire to impose quantitative restrictions on autos. The Committee rejected the request as unnecessary and inconsistent with the WTO rules. In the intervening five years, no requests for new quantitative restrictions or sector-specific measures have been presented.

A lingering problem from the GATT period was countries which maintained quantitative restrictions or prohibitions, generally applying only to specific sectors and of long-standing duration. The situation with respect to India's use of BOP measures is the best example of such a case. India's trade policy since the 1950s had featured quantitative restrictions for BOP reasons. Beginning in 1995 in the BOP Committee and continuing into dispute settlement in 1997, the United States and others challenged India's need to maintain measures for balance of payments reasons. A panel and the WTO Appellate Body agreed that India was not justified in its use of BOP measures. India will eliminate one-half of its remaining measures by April 1, 2000 and the remainder by April 1, 2001.

But beyond these two major cases, WTO Members acting through the BOP Committee, have a strong record of enforcing the new rules. In 1995, South Africa, Egypt and Israel disinvoked Article XVIII:B and agreed to complete the elimination of all BOP-justified measures. Egypt and Israel had maintained BOP-justified measures for many years. In that same year, Hungary imposed an import surcharge, and was asked to present a concrete timetable for the reduction and elimination of the surcharge; this surcharge was subsequently eliminated in 1997. In 1996, Poland, Slovak Republic, Philippines, Turkey, and South Africa eliminated all BOP-justified restrictions. In 1997, Tunisia and Bulgaria committed to the elimination of BOP-justified measures. Due to severe economic problems, the Slovak Republic temporarily re-introduced an import surcharge. In 1998, the Slovak Republic, Sri Lanka, and Bulgaria and, in 1999, Nigeria eliminated all BOP-justified restrictions.

Major Issues in 1999

Since entry-into-force of the WTO on January 1, 1995, the WTO BOP Committee has demonstrated that the hard-won new WTO rules provide Members additional, effective tools to enforce obligations under the BOP provisions. During 1999, the Committee held consultations with the Slovak Republic, Bangladesh and Romania, and saw Nigeria eliminate all BOP-justified restrictions. While India maintains import restrictions that were once justified on balance of payments grounds, these measures are no longer under the jurisdiction of the BOP Committee, but have moved to the dispute settlement arena.

In a dispute brought by the United States, a panel and the Appellate Body ruled during 1999 that India's restrictions were not justified on balance of payments grounds and were thus illegal. Under the terms of an agreement reached by the United States and India, India will phase out one half of its restrictions by April 1, 2000 and all remaining restrictions by April 1, 2001.

Work for 2000

In 2000, the Committee will consult with the following countries maintaining BOP-related restrictions: Pakistan, the Slovak Republic, and Romania. Additionally, should Members resort to BOP measures, the WTO provides for a program of rigorous consultation with the Committee. The United States expects the Committee will make further progress in ensuring that the WTO BOP provisions are used as intended to address legitimate, serious BOP problems through the imposition of temporary, price-based measures. The Committee will continue to rely upon the close cooperation with the IMF.